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**In the United States District Court for the
Middle District of Pennsylvania**

GREENE/GUILFORD ENVIRONMENTAL
ASSOCIATION, a non-profit corporation incorporated
under the laws of the Commonwealth of Pennsylvania,
CITIZENS FOR PLANNED COMMUNITY GROWTH,
an unincorporated association organized under the laws of
the Commonwealth of Pennsylvania, PAUL B. AMBROSE,
JOHN G. ENDERS, CHARLES F. RAHAUSER,
BETSY RAHAUSER, DOUGLAS A. WARNOCK, U.X
VAGNERINI, THOMAS W. BUNDY, STEPHEN P.
BUCHER, ROGER J. ROBERTSON, JAMES A.
STRITE, JR., DAVID A. GUTHRIE

Civ. No. 1:CV-01-0910

(Judge Rambo)

v.

KEN WYKLE, Administrator, Federal Highway
Administration, ROBERT GATZ, Federal
Highway Administration

and

BRADLEY L. MALLORY, Secretary for
The Department of Transportation, Commonwealth
of Pennsylvania

Defendant-Intervenor

FILED
HARRISBURG, PA

DEC 14 2001

MARY E. D'ANDREA, CLERK
PER 9/8 DEPUTY CLERK

**PLAINTIFFS' MOTION TO SUPPLEMENT
THE ADMINISTRATIVE RECORD AND FOR JUDICIAL NOTICE
OF CERTAIN DOCUMENTS**

AND NOW, come the Plaintiffs in the above captioned case and request that this
Court supplement the Administrative Record produced in this case with the following
documents:

1. The 1977 Franklin County Comprehensive Plan.
2. Contract(s) and Work Order(s) entered into between the Defendants and Archaeological & Historic Consultants, Inc. for the initial cultural resources study, referenced at AR-3 at page 115 in the Administrative Record.
3. Correspondence and/or Memoranda outlining the reasons for the decision not to prepare a Supplemental Draft Environmental Impact Statement. This Memoranda and/or correspondence is referenced in the Administrative Record at AR-97, page 999, where the record states “[a]lso enclosed is a copy of the Department’s justification for not preparing a supplemental EIS.”
4. Electronic mail communications sent between FHWA personnel from January of 1999 to June 28th of 2001 - the date of the release of the “Re-evaluation” of the ROD. Currently, the Administrative Record only contains electronic mail sent between FHWA personnel from the inception of the Interchange project extending to January of 1999.
5. Electronic mail communications from the inception of the project to June 28th of 2001 - the date of the release of the “Re-evaluation” - sent between PennDOT personnel. Although the Administrative Record contains electronic mail sent between FHWA personnel for some of that period, no PennDOT e-mails were included in the Record.
6. Missing page(s) of minutes of a PennDOT public meeting held on January 24, 1989. The included minutes are located in the Administrative Record at AR-87 at page 1, and the missing page(s) are between page 1 and page 2 of the numbered Administrative Record.

7. The Draft 4(f) Statement prepared for the interchange project. The existence of a completed "draft Section 4(f) Evaluation" is referenced in the Administrative Record at AR-102 at page 182.

8. The Transcript of the hearing held before the Agricultural Lands Condemnation Approval Board from May 9-11, 2000. The Defendants have chosen to include the final decision rendered by the Board in the Administrative Record at AR-138, at page 222-269. The hearing which produced the final decision was held to determine whether a "reasonable and prudent" alternative existed to the construction of the interchange at the Walker Road location. Approval of the condemnation was a prerequisite for construction of the interchange.

9. Map of the "potential avoidance alternative for the I-81 interchange," referenced at AR-100 at page 1693 of the Administrative Record.

10. Pre-May, 1990 historic and/or cultural resources study, referenced in AR-3 at page 115 of the Administrative Record. The study is referred to as "background research and a site visit," and was prepared by Archaeological & Historic Consultants, Inc. under contract to the Defendants.

11. A document evidencing the completion date and/or publication date of the "Interstate 81 Interchange: SR 8016: Plan of Study". The document is located at AR-85 of the Administrative Record and is undated.

12. Policy document, referred to in AR-91 at page 113, paragraph 14 of the Administrative Record. The document is referred to as a "recent interpretation of Act 61 by FHWA, PennDOT, and the Pennsylvania Turnpike Commission."

13. "Impact study for U.S. 30" prepared by the Wal-Mart Corporation, referenced at AR-94 of page 152 of the Administrative Record. On page 153 of the Record, the study is identified as one of the "Documents Acquired" by the Defendants.

14. The Farmlands Assessment Report (FAR) prepared by PennDOT for the ALCAB hearing held on May 9-11, 2000. A FAR, prepared several years earlier, became a "Farmlands Technical Memorandum" and is included in the Record at AR-35.

15. All Work Orders and Contracts entered into between the Defendants and consultants for work to be conducted on the Interchange project from the inception of the project to June 28, 2001.

16. February 10, 1995 Letter from FHWA's "Bill" to "Seppo" which reads "This is a demo project from the 1987 STURAA. It is apparently very important to Bud Shuster. My understanding is that the Division provides him with and [sic] updated status every two weeks."

17. August 19, 1996 Letter from Senator Rick Santorum to Ms. Carol Shull, the Keeper of the National Register, dealing with the removal of historic designation from Rural Historic Districts impacted by the Interchange.

18. November 21, 1996 Letter from Senator Rick Santorum to Ms. Katherine H. Stevenson, Associate Director, Cultural Resource Stewardship and Partnerships, National Park Service, recounting a meeting between Bryan Salzmman, Esq., Ms. Stevenson, and members of Senator Santorum's staff concerning the Interchange project.

19. A June 4, 1998 "Potential Issues with Proposed I-81, D Modified Avoidance Alternative" Memorandum. Page two of the Memorandum is entitled "Air Quality and Noise."
20. An April 7, 1998 Message from Richard Heimbach, II of Skelly and Loy to the USDA National Resources Conservation Service with an attachment entitled "Alternative D Modified, Preliminary Engineering" which outlines farmland which will be impacted by the Interchange project.
21. The July 13, 1998 Draft of the Record of Decision, and all other Drafts of the Record of Decision.
22. August, 1998 version of the document entitled "Mitigation Measures and Project Conditions, Interstate 81 Interchange, Franklin County, Pennsylvania." The December, 1998 final version of this document is located at AR-77 of the Administrative Record.
23. October 7, 1998 letter from Ronald Carmichael, FHWA to John Szajna of Nassaux-Hemsley, Inc. denying access to several documents under a FOIA request.
24. Missing Page 2 of a July 8, 1994 Letter from Barry Hoffman, PennDOT, to Ronald G. Huber. Pages one and three of that communication are included in the Administrative Record at AR-93 at page 481 and page 482.
25. Communication and attachment dated June 1, 1994, from L. Nace of PennDOT to Ron Huber. The attachment contained a policy statement which applies to access point justification requirements.

26. Memorandum dated August 2, 1993, "Subject: I-81 Interchange Pre-Draft EIS, SR 8016, Franklin County", from Wayne Kober to Fred Bowser, containing comments on the Pre-Draft EIS.

27. Draft of Letter from Howard Yerusalim to Congressman Shuster, dated June 5, 1992, with the handwritten notations: "Sent to Larry King, 6-5-92 at 4:05 p.m. 7-3154." "Resent to L.K. 6-9-92."

28. Draft of Letter from Howard Yerusalim to Congressman Shuster, dated May 29, 1992.

29. Draft Farmlands Assessment Report, prepared June, 1994.

30. October 23, 1987 "Twelve Year Highway and Bridge Program", page 431, attached to a December 2, 1987 Letter from Harvey Haack of PennDOT to Dr. Paul B. Ambrose. The December 2, 1987 letter should also be included as a supplement to the Administrative Record.

31. April 12, 1988, "Twelve Year Highway and Bridge Program: Project Status Report, Project Description and Location", page 3.

32. April 22, 1988, "Twelve Year Highway and Bridge Program: Project Status Report, Project Description and Location", page 3.

33. May 11, 1988, "Twelve Year Highway and Bridge Program", page 415.

34. July 18, 1989, "Twelve Year Highway and Bridge Program", page 318.

35. Original Draft of the October, 1995, "Addendum to Criteria of Effect Report: Proposed Interstate 81 Interchange (SR 8016), Franklin County, Pennsylvania, E.R. No. 90-1245-005."
36. PennDOT Design Manual, Part I, Chapter 2, Section 5, entitled "Justification Requirements for Additional Interchanges, Access Points, and Ramps on Completed Interstate and Other Limited-Access Highway Facilities." The document is referenced at page I-1 of the January, 1995, "Justification for an Additional Interchange."
37. Monthly Shuster Updates prepared by either FHWA or PennDOT staff, referred at AR-113 at page 107 of the Administrative Record.
38. PennDOT Publication No. 349, March, 1998, "The Transportation Project Development Process: Section 4(f) Handbook" Volume I and Volume II.
39. PennDOT Publication No. 319, September, 1996, "The Transportation Project Development Process: Needs Study Handbook."
40. PennDOT Publication No. 278, August, 1993, "The Transportation Project Development Process: Environmental Impact Statement Handbook."
41. Volume I and Volume II of PennDOT Publication, No. 324, February, 1997, "The Transportation Project Development Process: Agricultural Resource Handbook."
42. All "Progress Reports" filed by Orth-Rodgers, Inc. with either FHWA and/or PennDOT. These "Progress Reports" are referenced at AR-97 at page 937 of the Administrative Record.

43. Letter from George W. Fike, Board Secretary of the Chambersburg Area School District Board of Directors to Barry Hoffman, PennDOT dated November 13, 1998.

44. The Attachment to the July 13, 1992 Letter from U.S. Representative Bud Shuster to PennDOT Secretary Howard Yerusolim. An Attachment to the Letter is referenced in the index, but is not attached to the Letter at AR-90 at page 21 of the Administrative Record.

45. Two Letters, dated November 16, 2000 and December 29, 2000, from Richard Heimbach, II of Skelly and Loy, to Lois and D. LaMar White, and to another farmer in the Walker Road area.

46. Pre-Hearing Memoranda and Attachments to the Memoranda filed by Mike Meloy, Esq. on behalf of Greene Township and by Thomas Linzey, Esq. on behalf of Lois and D.LaMar White in the Agricultural Lands Condemnation Approval Board (ALCAB) prior to the May, 2001 hearing held by that Board.

47. All Traffic Studies prepared for the Route 30 improvements by PennDOT and/or FHWA.

48. Newspaper Article: "Guilford Plans for Growth: Sewers, Roads Will be Upgraded," Chambersburg Public Opinion at page 6A, October 25, 2001.

49. "Project Locations Study: U.S. Route 30, Section S01", prepared by Gannett Fleming in June of 1993.

50. Subdivision Plans for development which would require access to a state road, submitted by Guilford Township to PennDOT, from 1999 to the present.

51. Electronic mails sent between staff for U.S. Representative Bud Shuster and PennDOT; and electronic mails sent between staff for U.S. Representative Bud Shuster and FHWA.

52. A January 19, 1996 Memorandum sent from Bradley D. Keazer, District Engineer for FHWA to Mr. David Gibbs, entitled "Franklin County, S.R. 8016, Section 001, I-81 Interchange, Point of Access Request."

53. A March 1, 1995 Memorandum sent from Rodney Slater of FHWA to David Gendell, Regional Federal Highway Administrator, entitled "ACTION: Pennsylvania, Request for Additional Access Points, I-81/Walker Road, Chambersburg."

54. All Proposals for Work Orders submitted by consultants seeking work orders from PennDOT and FHWA to work on the planning, design, and engineering of the Interchange project. The "Proposal for Work Order No.4, Agreement No. 085164" submitted by Sheladia Associates, Inc. and dated January 6, 1995, should be included in this supplement. The Administrative Record did not contain any Proposals for Work Orders.

55. All Advertisements prepared by PennDOT and FHWA for work to be completed on the Interchange project. The Administrative Record did not contain any Advertisements of this nature.

56. A March 20, 1995 Letter from Michael Ryan of PennDOT to Manuel Marks of FHWA, entitled "Agreement No. 085164, Work Order No. 4."

57. A March 21, 1995 Memorandum from William J. Greene of PennDOT to "Proposal Evaluation for Work Order No. 4."

58. An April 20, 1989 letter and attachment from Brad Brosius of Johnson, Mirmiran and Thompson, P.C. to Daryl Kerns.

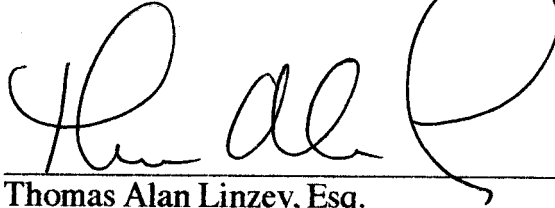
59. A June 30, 1993 letter and enclosure from Phil Ouellet, on behalf of Manuel Marks, to Mr. Richard P. Kramer, Chairman of the Greene Township Board of Supervisors.

60. A September 5, 1989 letter with enclosures from John A. Hart, Chief Clerk, Franklin County Commissioners to Harvey Haack, P.E., Deputy Secretary of PennDOT.

61. A June 12, 1990 letter from Commissioner Joe W. Ausherman to Mr. Robert R. Mueser, P.E., District Engineer, PennDOT District 8-0.

THEREFORE, the Plaintiffs respectfully request that this Court GRANT the requested supplementation of the Administrative Record and/or judicially notice documents sought by the Plaintiffs in this case as outlined in this Motion.

Respectfully Submitted this 13th Day of December, 2001,

A handwritten signature in black ink, appearing to read 'H. Linzey', written over a horizontal line.

Thomas Alan Linzey, Esq.
Supreme Court I.D. #76069
Community Environmental Legal Defense Fund (CELDF)
2859 Scotland Road
Chambersburg, Pennsylvania 17201
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Counsel for the Plaintiffs

Certificate of Non-Concurrence

Concurrence on this Motion was sought from both the Defendants and the Intervenor. Both parties objected to the inclusion of almost all of the documents sought by the Plaintiffs. Five documents originally requested were located in the Administrative Record by the Defendants and those items have been omitted from this Motion.

CERTIFICATE OF SERVICE OF PROCESS

I, Thomas Linzey, hereby swear and affirm that I have served the accompanying MOTION TO SUPPLEMENT and SUPPORTING BRIEF on the Parties identified below by the following method:

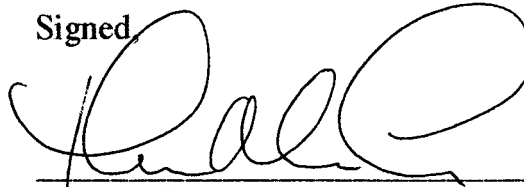
Pre-Paid First Class U.S. Mail

The following individuals were served with the MOTION and BRIEF:

Anne K. Fiorenza, Esq.
Martin Carlson, Esq.
Acting U.S. Attorney for the Middle District of Pennsylvania
Suite 217, Federal Building
228 Walnut Street
Harrisburg, Pennsylvania 17108-1754

Kenda Jo Gardner, Esq.
Office of Chief Counsel
Pennsylvania Department of Transportation
P.O. Box 8212
Harrisburg, Pennsylvania 17105-8212

Signed,

A handwritten signature in black ink, appearing to read 'T. Linzey', written over a horizontal line.

Thomas Alan Linzey, Esq.
Community Environmental Legal Defense Fund (CELDF)
2859 Scotland Road
Chambersburg, Pennsylvania 17201

Counsel for the Plaintiffs

Dated this 13th Day of December, 2001